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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,099	03/13/2001	Gayle Marie Frankenbach	8244	2087

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EXAMINER	
KHAN, AMINA S	

ART UNIT	PAPER NUMBER
1751	

MAIL DATE	DELIVERY MODE
07/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/805,099	FRANKENBACH ET AL.	
	Examiner	Art Unit	
	Amina Khan	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,15-18,22,24-53 and 56-80* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,15-18,22,24-53 and 56-80* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 1, 2007 has been entered.

2. Claims 1-11,15-18,22,24-53 and 56-80 are pending. Claims 12-14,19-21,23,54 and 55 are cancelled. Claim 1 has been amended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-11,15-18,22,24-53 and 56-80 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Frankenbach et al. (US 6,491,840).

Frankenbach et al. teaches methods of removing wrinkles by providing a wrinkle removal composition which may be used without heat and providing a set of instructions (column 84, lines 21-51) to apply said composition to wrinkles and to manipulate the fabric to remove wrinkles and let the fabric dry (column 85, lines 28-53), as claimed in claim 1.

Frankenbach further teaches that the compositions comprise at least 0.5% but less than 15% by weight water-soluble solvent (column 15, lines 1-30), which meets the claimed limitations of claims 2-6. Frankenbach further teaches that the compositions comprise perfumes (column 55, lines 51-60), which meets the claimed limitation of claim 9, silicone surfactants (column 16, lines 23-25), which meets the claimed limitation of claim 10, and lithium salts (column 31, lines 29-67), as claimed in claim 1. Frankenbach further teaches that the composition is provided in a container and the set of instructions

is also provided associated with the container (column 84, lines 22-25), which meets the claimed limitations of claim 11.

Frankenbach further teaches that the instructions disclose to use a hair dryer to blow air across the fabric (column 89, lines 19-36), which meets the claimed limitation of claim 15. Frankenbach further teaches stretching or smoothing of the fabric by hand (column 88, lines 34-44), which meets the claimed limitations of claims 16 and 17. Frankenbach further teaches pinching the fabric with hands to reinforce creases or pleats (column 88, lines 55-67), which meets the claimed limitations of claim 18. Frankenbach further teaches that the instructions provide benefits other than wrinkle removal such as reducing odors, improving softness, etc. (column 84, lines 40-46). Frankenbach further teaches that the compositions are useful to treat garments for extending the time before another wash cycle is needed (column 86, lines 50-55), which meets the claimed limitations of claim 41.

Frankenbach further teaches that the compositions be held in a spray dispenser specifically a non-manual powered sprayer (column 79, lines 15-20), which meets the claimed limitations of claims 38 and 39. Frankenbach further teaches that the sprayer stream will be released by a triggering mechanism (column 79, 42-44), which meets the claimed limitations of claim 40. Frankenbach further teaches how to treat fabrics after improper storage, specifically after compression from storage in tight containers or after being left in the dryer too long after the end of the drying cycle (column 87, lines 9-16), which meets the claimed limitations of claims 42 and 43.

Frankenbach further teaches that the instructions comprise instruction to treat fabrics with 5-150% by weight of the fabric of the composition (column 85, lines 30-40), which meets the claimed limitations of claim 44. Frankenbach further teaches that the composition be applied evenly over fabric (column 87, lines 55-56) using a sweeping motion (column 87, lines 52-55), which meets the claimed limitations of claims 45 and 46. Frankenbach further teaches that the compositions be more highly dosed over wrinkled sites (column 87, lines 57-60) and the fabric sprayed from at least 6 inches but less than 12 inches away (column 87, lines 35-47), which meets the claimed limitations of claims 47, 48 and 49. Frankenbach further teaches that the composition be applied to household fabrics while the household fabrics reside in their typical environment, such as shower curtains being treated on the rod and table linens treated on the table (columns 91-92, lines 64-32), which meets the claimed limitations of claim 50. Frankenbach further teaches that the composition be applied to fabrics while on the hanger (column 92, lines 42-52).

Regarding the claimed limitation of "uniform composition when at rest" and a composition with a flash point greater than 60°C, while the prior art is silent about the claimed properties, they would be inherent to the composition because the composition comprises the same components at the same percentages (water miscible solvent, perfumes, and starch).

Regarding claims 22-37,52,53 and 56-80, which further limit the instructional information provided to the consumer, Frankenbach teaches including instructions either printed on the container itself or presented in a separate manner including, but

not limited to, a brochure, print advertisement, electronic advertisement, and/or broadcast communication so as to communicate the set of instructions to a consumer of the article of manufacture (column 77, lines 35-67), which meets the claimed limitations of the instant claims. Frankenbach et al. further teaches that the set of instructions can comprise the instruction or instructions to achieve the benefits discussed in the patent by carrying out any of the methods of using wrinkle controlling compositions as described in the patent (column 84, 45-51).

Regarding the claimed limitations of "promoting the acceptance/usage", "convincing said consumers that composition performance is genuine" and "promoting acceptance of said composition" as recited in claim 1, the limitations were given little patentable weight because they simply recite intended use and do not further limit the method steps of the instant claims. The teachings of Frankenbach et al. meet the method step limitations of the instant claims. Accordingly, the teachings of Frankenbach et al. anticipate the material limitations of the instant claims.

In the alternative, the claimed limitations of "promoting acceptance/usage", "convincing said consumers that composition performance is genuine" and "promoting acceptance of said composition" and the claimed limitations on instructional information would have been obviously provided by the process as disclosed by Frankenbach et al. because Frankenbach et al. teaches similar compositions with similar methods for treating fabrics and similar forms of instructional information to highlight the benefits of the fabric treatments when applied by the taught methods.

Furthermore, regarding applicant's recitation of what is disclosed by the instructions, "Where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure or new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch of art considered does not change these principles." Ex parte Gwinn 112 USPQ 439. As the compositions are obvious, and the instructions do not give rise to a new and useful function, effect or result, they do not contribute a patentable difference to applicant's invention, and thus are not accorded any patentable weight.

> Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, **>367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004)< (Claim at issue was a kit requiring instructions and a buffer agent. The Federal Circuit held that the claim was anticipated by a prior art reference that taught a kit that included instructions and a buffer agent, even though the content of the instructions differed.). See also *In re Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability .... [T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

4. Claims 1-11,15-18,22,24-53 and 56-80 are rejected under 35 U.S.C. 103(a) as obvious over Frankenbach et al. (US 6,491,840), as applied to the claims above, and

further in view of "Canadian Advertising Success Stories 1999: Sunlight Laundry Detergent" document.

Frankenbach et al. are relied upon as set forth above.

Frankenbach et al. are silent as specific consumer groups.

The Sunlight document teaches the success of TV advertising and print advertising in fashion magazines and newspapers of laundry detergents particularly targeting moms and kids (page 3). The Sunlight document further teaches money-back guarantees (page 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the methods of advertising taught by the Sunlight document are effective and conventional in the laundry detergent sales and would have been obviously encompassed by the teachings of Frankenbach. Furthermore, moms with kids meet the limitations of consumers with busy lifestyles, consumers having physically active lifestyles, consumers living in small domiciles and consumers with limited incomes. One of ordinary skill in the art would have been motivated to combine the teachings of the references absent unexpected results.

5. Claims 1-11,15-18,22,24-53 and 56-80 are rejected under 35 U.S.C. 103(a) as obvious over Frankenbach et al. (US 6,491,840), as applied to the claims above, and further in view of "Indiana Marketing Educators' Update" document.

Frankenbach et al. are relied upon as set forth above.

Frankenbach et al. are silent as specific consumer groups and live demonstrations.

The Marketing document teaches the success of TV advertising, specifically in the Tide laundry detergent ad where a product demonstration was conducted showing the benefits of laundering with tide (pages 5 and 6, The Power of Advertising).

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the methods of advertising taught by the Marketing document are effective and conventional in the laundry detergent sales and would have been obviously encompassed by the teachings of Frankenbach. It is well known that TV commercials are conventionally 30 seconds to 1 minute long. Furthermore, all categories of consumers instantly claimed watch television. One of ordinary skill in the art would have been motivated to combine the teachings of the references absent unexpected results.

6. Claims 1-11,15-18,22,24-53 and 56-80 are rejected under 35 U.S.C. 103(a) as obvious over Frankenbach et al. (US 6,491,840), as applied to the claims above, and further in view of Trinh et al. (US 5,977,055).

Frankenbach et al. are relied upon as set forth above.

Frankenbach et al. are silent as specific consumer groups and newspapers or television advertising.

Trinh et al. teach that it is highly desirable to package fabric softeners with instructions informing the consumers by words or pictures as to the fabric care benefits

of the product. Trinh et al. further teach advertising in newspapers or on television (column 57, lines 30-55).

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the methods of advertising taught by Trinh et al. are effective and conventional in fabric softener sales and would have been obviously encompassed by the teachings of Frankenbach. It is well known that TV commercials are conventionally 30 seconds to 1 minute long. Furthermore, all categories of consumers instantly claimed watch television. One of ordinary skill in the art would have been motivated to combine the teachings of the references absent unexpected results.

Response to Arguments

7. Applicant's arguments filed regarding Frankenbach et al. have been fully considered but they are not persuasive.

The applicant argues:

"The Examiner's citation of Ngai and Gulack in support of the rejections is noted; i.e., "Where the only differences between a prior art product and a claimed product is printed matter .... " [emphasis supplied] Of course, the present invention does not relate to a ~ but rather to a method directed to the solution of a meaningful problem relating to the habits and practices of consumers."

"In the LEXIS report at page 2, column 1, the Court in Ngai notes, "Thus, the Board. argues, Ngai can claim the new use as a method, but cannot claim the existing product itself."' [emphasis supplied] And, the Ngai Court liberally cited Gulack.
Net: The very case law cited by the Examiner clearly shows that a method claim would be proper under circumstances (printed instructions) that square with the method claims herein. As a matter of fairness, the Examiner is urged to reconsider any grounds for rejection that may be based on a misapprehension of Ngai or Gulack."

"Succinctly stated, US 6,491,840 does not meet the foregoing tests to support any rejection under §102, with regard to the claims as now amended. Nothing in "840 suggests any need to "target" any specific class/list of prospective users, much less suggests who such people might be. Accordingly, each and every element of the present claims is not found in '840, and the rejection should be withdrawn."

The examiner respectfully disagrees. The teachings of Frankenbach et al. clearly meet the instantly claimed limitations. Frankenbach et al. teach the instantly claimed compositions and methods of usage and further provide instructional material not limited to brochure, print advertisement, electronic advertisement, and/or verbal communication, so as to communicate the set of instructions to a consumer of the article of manufacture. Frankenbach et al. further teach that the set of instructions preferably comprise the instruction to apply an effective amount of the composition, preferably by spraying, to provide the indicated benefit, and/or reduction in time and/or effort of ironing and optionally, the provision of the main effect of odor control and/or reduction (column 84, lines 20-51). The examiner maintains that these limitations anticipate the active method steps of providing a wrinkle removal composition, providing information to consumers and promoting acceptance of the composition.

Regarding the limitations on consumers recited in claim 1, such as those with busy lifestyles, physically active lifestyles, and those with limited incomes encompass all consumers and therefore inherently the ones taught by Frankenbach et al.

The examiner further argues that the limitation "convincing said consumers" is not a tangible method step because the applicant has no control over the mental state of the consumer.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amina Khan whose telephone number is (571) 272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AK
July 23, 2007

LORNA M. DOUYON
PRIMARY EXAMINER